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09/863,092	05/22/2001	Donald R. Glover	7590.24US01	9012

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EXAMINER

BOTTORFF, CHRISTOPHER

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 07/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/863,092

Applicant(s)

GLOVER, DONALD R.

Examiner

Christopher Bottorff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6-11 and 13-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-11 and 13-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

### **DETAILED ACTION**

The amendment filed June 9, 2003 is entered. Claims 1-3, 6-11, and 13-22 are pending.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites the limitation "the second attachment mechanism receptacle" in lines 12-13. There is insufficient antecedent basis for this limitation in the claim. For the purposes of examination, the "second attachment" recited on lines 5-6 is interpreted as defining a second attachment mechanism receptacle.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by

Lamson US 4,458,906.

Lamson discloses a toy sled having a body 19, 21, 23 and a wheeled item in the form of a floor scooter 12 with four caster wheels 16 and 18 connected to a rectangular base piece 20. The body includes a top surface adapted for receiving a plurality of riders and a bottom surface comprising an engagement recess adapted for receiving the wheeled item. Also, an attachment mechanism 37 removably secures the wheeled item in the engagement recesses. See Figures 1-3; column 2, lines 48-58; and column 3, lines 3-9.

The base piece 20 of the wheeled item includes a first side and a second side. The four wheels 16 and 18 are rotatably connected to the first side of the base piece and the first side of the base piece is positioned between the four wheels and the second side of the base piece. The second side of the base piece is secured to the body so that the four wheels extend away from the body. See Figures 2 and 3.

In addition, first and second attachment mechanism receptacles 34 are provided in the bottom surface of the body and they are longitudinally aligned. The attachment mechanism 37 removably secures the scooter to the recess 34 using the attachment mechanisms. See column 3, lines 11-13. Also, the sled includes a first handle 14 and a second handle formed by the side edges of the body such that it extending along the length of the body, the attachment mechanism 37 is a bolt, and the body is formed of polyethylene. See Figures 1 and 2 and column 3, lines 3-5.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 18, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lamson US 4,458,906 alone.

Lamson discloses the sled discussed above. However, Lamson does not disclose that the rectangular shape of the scooter is specifically a square, and does not disclose the specific dimensions of claims 18, 20, and 21.

The claimed shape and dimensions are not disclosed as being critical. In fact, on line 39 of page 6 through line 1 of page 7 of the specification Applicant states that the sled "can be shaped and sized as desired" and that the sled "can be essentially any shape and size".

It is well settled that changes in shape are a matter of choice that a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration claimed is significant. See *In re Dailey* 149 USPQ 47 (CCPA 1966). Changing the shape of the scooter of Lamson from a rectangle to a square would have been obvious to one of ordinary skill in the art at the time the invention was made in order to reduce the material required to manufacture the scooter.

The claimed dimensions are merely an optimization of the size of the sled of Lamson that would have been ascertained by one of ordinary skill in the art through routine experimentation. Forming the dimensions of the sled as claimed would have

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been obvious to one of ordinary skill in the art at the time the invention was made in order to appropriately size the sled for a particular user or a particular application.

Claims 9 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lamson US 4,458,906 in view of Kratzenberg et al. US 6,276,471.

Lamson does not disclose that the handle is included in the body. However, Kratzenberg et al. teaches that arranging a sled handle 18 in a body 1 of the sled was old and well known in the art at the time the invention was made. See Figures 1 and 2. From the teachings of Kratzenberg et al., arranging the handle of Lamson in the body would have been obvious to one of ordinary skill in the art at the time the invention was made. This would simplify assembly by eliminating the need to access the underside of the sled when attaching the handle. Furthermore, arranging the handle of Lamson in the body represents an obvious rearrangement of parts that would not modify the operation of the device.

Claims 10 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lamson US 4,458,906 in view of Bergsland US 3,705,730.

Lamson does not disclose a connector at the first end of the body and a connector receptor at the second end of the body. However, Bergsland teaches that the practice of providing a toy sled with a connector 5 at a first end of a body and a connector receptor 3 at a second end of the body was old and well known in the art at the time the invention was made. See Figures 1 and 2. From the teaching of

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Bergsland, providing the sled of Lamson with a connector at the first end of the body and a connector receptacle at the second end of the body would have been obvious to one of ordinary skill in the art at the time the invention was made. This would allow the sled to be formed into a train with other sleds.

Claims 3, 11, and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lamson US 4,458,906 in view of Null et al. US 5,947,495.

The sled of Lamson only utilizes one scooter arranged in the recess. Lamson does not disclose two scooters, as claimed. However, Null et al. teaches that the practice of providing a sled with two scooters 50 and 60 was old and well known in the art at the time the invention was made. See Figures 1 and 2. From the teachings of Null et al., providing the sled of Lamson with two scooters would have been obvious to one of ordinary skill in the art at the time the invention was made. This would provide the sled with greater stability and support.

Also, providing the sled of Lamson with two scooters represents an obvious duplication of the parts of Lamson that would not provide a new and unexpected result. See *In re Harza* 124 USPQ 178 (CCPA 1960). Providing two scooters would have been obvious to one of ordinary skill in the art at the time the invention was made in order to offer greater stability and support to the body.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lamson US 4,458,906 in view of Null et al. US 5,947,495 as applied to claim 11 above, and further in view of Kratzenberg et al. US 6,276,471.

Lamson does not disclose that the handle is included in the body. However, Kratzenberg et al. teaches that arranging a sled handle 18 in a body 1 of the sled was old and well known in the art at the time the invention was made. See Figures 1 and 2. From the teachings of Kratzenberg et al., arranging the handle of Lamson in the body would have been obvious to one of ordinary skill in the art at the time the invention was made. This would simplify assembly by eliminating the need to access the underside of the sled when attaching the handle. Furthermore, arranging the handle of Lamson in the body represents an obvious rearrangement of parts that would not modify the operation of the device.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lamson US 4,458,906 in view of Null et al. US 5,947,495 as applied to claim 11 above, and further in view of Bergsland US 3,705,730.

Lamson does not disclose a connector at the first end of the body and a connector receptor at the second end of the body. However, Bergsland teaches that the practice of providing a toy sled with a connector 5 at a first end of a body and a connector receptor 3 at a second end of the body was old and well known in the art at the time the invention was made. See Figures 1 and 2. From the teaching of Bergsland, providing the sled of Lamson with a connector at the first end of the body



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and a connector receptacle at the second end of the body would have been obvious to one of ordinary skill in the art at the time the invention was made. This would allow the sled to be formed into a train with other sleds.

### ***Response to Arguments***

Applicant's arguments with respect to previously rejected claims 1-3, 6-11, and 13-22 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Roden, Roby et al., Carbonero, and Spindel et al. disclose sleds.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Bottorff whose telephone number is (703) 308-2183. The examiner can normally be reached on Mon.-Fri. 7:30 a.m. - 4:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on (703) 308-0885. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

A handwritten signature in black ink, appearing to read "Christopher Bottorff". The signature is written in a cursive, flowing style.

Christopher Bottorff  
July 1, 2003